

**REPORT - PLANNING COMMISSION MEETING  
December 8, 2005**

**Project Name and Number:** Development Agreement for Pacific Commons (PLN2006-00031)

**Applicant:** ProLogis

**Proposal:** To consider a City Manager's Report on the annual review of the Development Agreement for the time period of June 1, 2004 to May 31, 2005

**Recommended Action:** Find the applicant in compliance with the Development Agreement

**Location:** Westerly of I-880, between Auto Mall Parkway and Cushing Parkway

**Assessor Parcel Number(s):** 531-185-5-7, 531-185-4-5, 525-1326-3, 525-1326-5, 525-1326-6, 525-1326-8, 525-1326-7-1, 525-1326-9, (Vesting Map Tracts 7200 and 7458)

**Area:** Approximately 822 acres

**Owner:** ProLogis

**Agent of Applicant:** Dan Marcus, Senior Vice President

**Consultant(s):** None

**Environmental Review:** This Development Agreement annual review is not a project as defined in the CEQA Guidelines Section 15368, therefore, no further action is required and none of the conditions of CEQA Guidelines Section 15162 requiring additional environmental review exist.

**Existing General Plan:** Restricted Industrial, Commercial Industrial Overlay; Institutional Open Space (Wetlands); Institutional Open Space (Park, Transit Center, Water Quality Ponding Facility), Bay Trail

**Existing Zoning:** P-2000-214, Planned District, as amended by PLN2003-00166

**Existing Land Use:** Industrial, Commercial, Vacant and Wetlands

**Public Hearing Notice:** Public hearing notification is applicable. A total of 222 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Auto Mall Parkway, Christy Street, Boyce Road, Auto Mall Circle, Cushing Parkway, North Port Loop, Enterprise Street, Davensport Place, Hanover Place, Industrial Drive, Brandin Court, Randall Place and Boscell Road. The notices to owners and occupants were mailed on November 23, 2005. A Public Hearing Notice was delivered to The Argus on November 21, 2005 to be published by November 24, 2005.

**Executive Summary:** On May 9, 2000, the City Council approved a Development Agreement between the City and Catellus Development Corporation, now ProLogis (Effective September 15, 2005 Catellus Development Corporation was purchased by ProLogis). The Development Agreement requires ProLogis to submit compliance evaluation for an annual review of the agreement to determine whether the company is in compliance with all obligations required to be performed during the one year review period. This report to the Planning Commission concludes that ProLogis was in general compliance with the Development Agreement in the 2004-2005 review period and recommends the Planning Commission find ProLogis to be in compliance.

**Background and Previous Actions:** The Pacific Commons Development was originally approved in 1996 with a mixed-use industrial development and retail “power center” on approximately 840 acres. Due to a reduction of the developable land to create wetlands and preserve habitat within the project and changing market conditions since the 1996 Council approval, subsequent land use changes and approvals have occurred to respond to the changing market trends.

On June 26, 2003, the Planning Commission recommended that the City Council approve the Planned District Major Amendment (PLN2003-00166) to allow for the development of a major retail development on approximately 79 acres of land. The Council subsequently approved this amendment. The amendment specifically approved the following:

- Allow for the creation of a unique, pedestrian-oriented community retail shopping center at the east Activity Center in place of the previously envisioned hotel, office and retail uses (Planning Area 1);
- Relocate the Major Retail Area eastward from its current location to an approximately 40 acre area along Auto Mall Parkway between Christy Street and Boscell Road (Planning Area 2 & 3);
- Allow for the development of mixed retail, one to four-story Office/Research & Development buildings and auto dealerships on the west side of Boscell Road from Auto Mall Parkway to Curie Street (Planning Area 4);
- Return Boscell Road to the alignment proposed through the 2000 approvals; and
- Extend Pacific Commons Boulevard from Curie Street to Auto Mall Parkway.

Additionally, amendments to the Development Agreement were adopted which: (i) extended the completion date for Cushing Parkway; and (ii) limited drive-thru restaurants to two unique establishments.

Since the 2003 approval, ProLogis has been active in marketing and developing the site for retail tenants. By the end of 2006, it's anticipated that all of the 79 acres devoted to major retail development will be built upon.

**Compliance Issues:** While several changes to the project relating to retail uses have occurred since the Development Agreement became effective, those changes do not affect the compliance obligations required of ProLogis. The specific obligations to be addressed in the ProLogis compliance evaluation are:

1. Construction status of Cushing Parkway and Pacific Commons Boulevard;
2. City's purchase of the Municipal Parcel (an approximately 40 acre parcel at the northwesterly corner of project site)
3. City's purchase of the Stevenson Parcel (an approximately 2 acre parcel at the westerly terminus of Stevenson Boulevard for city uses);
4. Status of a Business Conference Center to be located along Christy Street near Interstate 880 or other location; and
5. Status of the Fire Station Promissory Note.

*Construction of Cushing Parkway and Pacific Commons Boulevard:* The Development Agreement establishes a timetable for the start of construction of the two segments of Cushing Parkway. The City extended the deadline for commencing construction on the northerly segment to October 1, 2001. Construction on the southerly segment began on June 10, 2002. Construction of both segments was to be completed by June 30, 2003. On July 22, 2003, the City Council approved an amendment of the Development Agreement, to extend the deadline for completion and acceptance of Cushing Parkway to January 1, 2004 (with Cushing Parkway to be opened to traffic no later than October 1, 2003). The Development Agreement amendment also gave the City Manager the authority to grant an additional 90 day extension of the deadline upon showing of a good cause for such extension. During construction the City identified several issues requiring additional work on the bridge that runs through the wetlands. That work was completed this past winter and Cushing Parkway was opened to public traffic on January 15, 2005. While Cushing Parkway has not yet been accepted into the City public street system by the City Engineer, ProLogis is still working to resolve the remaining final construction items.

With regards to Pacific Commons Boulevard, Condition 46 of the Planned District states that the City is not obligated to approve building permits beyond three million square feet until the developer has commenced the construction of the first segment of Pacific Commons Boulevard. This condition was included to reflect the City interest in realizing this very important transit/pedestrian centered street as soon as possible. However, because building permit issuance has not yet reached the three million square foot threshold during the review period, the potential impact on building permit issuance and construction of Pacific Commons Boulevard (first segment) was not triggered.

**Municipal Parcel:** Article 3 of the Option Agreement, which is a subpart of the Development Agreement, refers to the Municipal Parcel as an approximately 47 acre area at the northwesterly corner of the project site, which was considered for a potential City park, flood control facility and/or transportation center. The exact acreage to be acquired by the City was dependant on the amount needed for flood control and water quality facilities. In its compliance report to the Planning Commission on August 9, 2001, Catellus reported that the City purchased a 40.48 acre portion of that parcel for a municipal facility. ProLogis therefore has no further Development Agreement obligation related to the purchase of the Municipal Parcel during the 2004-2005 annual review period, as the City had already purchased the site.

**Stevenson Parcel:** Article 2 of the Option Agreement requires ProLogis to grant to the City the exclusive right to purchase, for one dollar (\$1.00), approximately 2 acres of a parcel at the westerly terminus of Stevenson Boulevard, known as the Stevenson Parcel, for a municipal purpose. The time frame for the purchase was the lifetime of the Development Agreement or a lesser time described in the agreement. The City has not yet purchased the parcel, but the option to purchase this parcel remains available and within the City's discretion to exercise, therefore ProLogis has fulfilled its obligation to make the Stevenson Parcel available to the City during the timeframe of this review.

**Business Conference Center:** Article 4 of the Option Agreement provided for the City acquisition of two (2) parcels (3 acres and 5 acres, respectively) for a Business Conference Center. The original Option Agreement contained two "preference" areas where the center might be located (subsequent amendments changed the location of those parcels). The amendment to the Development Agreement recommended to the Planning Commission on June 26, 2003 and approved by the City Council on July 22, 2003, essentially eliminated the option for the City's purchase of the Conference Center parcels upon the issuance of a building permit for the retail use; exchanging the value of the parcels for a combination of a contribution of \$500,000 to the General Fund by Catellus and a credit of \$500,000 to Catellus in a "Retail Enhancement Fund" to attract retailers generating substantial sales tax revenues (PLN2003-00166). Because such retail building permits have been issued, and payments made by Catellus, the Business Conference Center obligations have been fulfilled by Catellus during this annual review time period.

**Fire Station Promissory Note:** The 2000 Fire Station Promissory Note was an agreement in which Catellus would pay the City \$1,212,000 over six years to help defray the cost of constructing Station 11. The Note required Catellus to pay the City additional money related to the difference between the estimated market value of the land purchased for Fire Station 11 outside of the project area and the value of the industrial land Catellus agreed to provide in the 1996 agreement (referred to as the contingent amount). The difference was to be credited to the City in its purchase of the Municipal Parcel. The City purchased the Municipal Parcel in 2001 with \$1,620,432.00 (the contingent amount) credited to the purchase. In the 2000 Development Agreement, the \$1,212,000 for defraying the cost of the fire station was due in six annual payments commencing ninety days after the station is providing full fire protection services. An amendment to the Development Agreement to reduce the payment by \$202,000, by eliminating the sixth year payment, was considered by the Planning Commission on June 26, 2003 and approved by the City Council on July 15, 2003, with the equivalent value of the sixth year payment added to the "Retail Enhancement Fund", which has been paid by Catellus. The timing of the fire station construction is dependent on development activity in the area. Aside from the payment already made, ProLogis had no further obligation to perform during the review period in respect to the Fire Station Promissory Note.

**Environmental Analysis:** An EIR and Supplemental EIR ('SEIR') were previously approved for the Pacific Commons project. An Addendum to the SEIR was prepared and adopted for the 2003 Planned District Major Amendment finding the project to be consistent with the original plan and environmental documents.

The current action required of the Planning Commission is an annual review of the Development Agreement for compliance, not a project that might have environmental impacts as defined by CEQA Guidelines, Section 15163. Therefore, no additional environmental documents are required.

**Mitigation Monitoring Reporting Plan:** A Mitigation Monitoring and Report Plan (MMRP) for the Pacific Commons project has been adopted by the City in conjunction with prior approvals. The MMRP lists every mitigation measure required by the City and other public agencies, identifies the time at which the mitigation measure is to occur, the responsible agency for approving the mitigation measure and an area for City staff to complete when each mitigation measure is fulfilled. Each year, the applicant submits a status report on the mitigation measures. The status report lists those project mitigation measures that require formal approval. For each mitigation, the status report indicates whether

the mitigation is completed (and refers to the evidence to support that statement), not completed, or an ongoing activity that will be required until the project is completed. When staff determines that a required mitigation activity is complete, the MMRP item is signed off by the City Engineer or Project Planner. A copy of the updated MMRP is enclosed for informational purposes only.

**Conclusion:** Staff believes that ProLogis is generally in compliance with the provisions of the Development Agreement for the June 1, 2004 to May 31, 2005 review period, as the work anticipated to be done during that time period is substantially completed. Under the provisions of the Fremont Municipal Code, if the Planning Commission finds the developer to be in compliance, the review is completed. If the Planning Commission finds and determines on the basis of substantial evidence the property owner has not complied in good faith with the terms and conditions of the agreement during the period of review, the Planning Commission must forward its recommendation to the City Council. The City Council reviews the record to determine compliance, and may modify or terminate the Development Agreement.

**Response from Agencies and Organizations:** None

**Informational:** Annual Status of Satisfaction of Conditions in the City of Fremont Mitigation Monitoring Plan  
Annual Status of Satisfaction of Conditions in the City of Fremont Mitigation Monitoring Plan (Appendix 1)

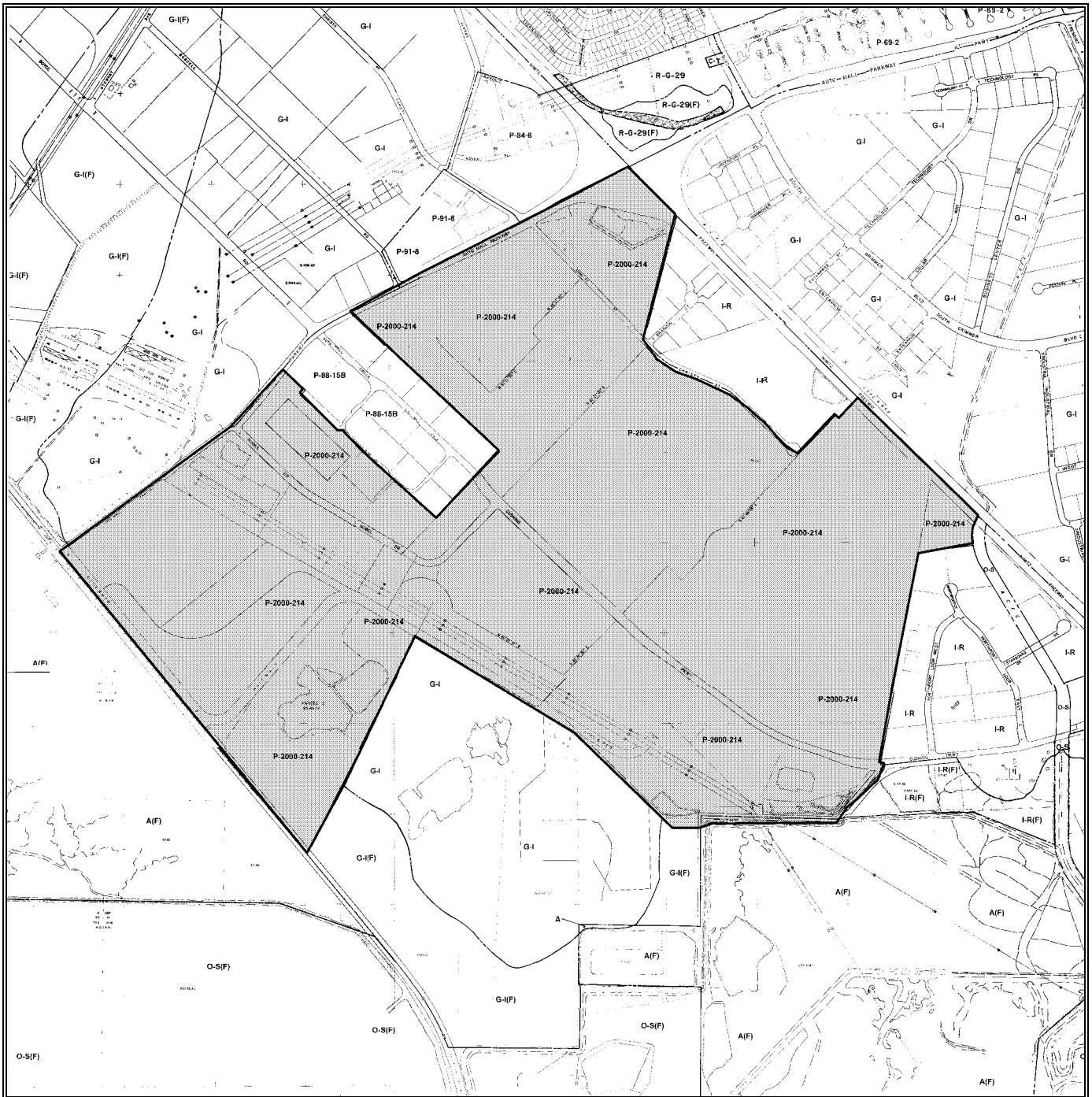
**Enclosures:** Compliance Evaluation form submitted by ProLogis, dated October 13, 2005 for the Annual Review Period: June 1, 2004 to May 31, 2005. Identified as Exhibit "A" to this Report

**Exhibit:** Exhibit "A" Compliance Evaluation form submitted by ProLogis, dated October 13, 2005 for the Annual Review Period: June 1, 2004 to May 31, 2005.

**Recommended Actions:**

1. Hold public hearing.
2. Find the annual review of the Development Agreement is not a project defined in CEQA Guidelines Section 15168 and that no further environmental documentation is needed for this review.
3. Find and determine on the basis of substantial evidence in the record of the proceedings, that for the review period June 1, 2004 to May 31, 2005, the Developer has generally complied with its obligations under the 2000 Amended and Restated Development Agreement between the City of Fremont and ProLogis for the Pacific Commons Project.

Existing Zoning  
Shaded Area represents the Project Site



# Existing General Plan

